

STATE OF CALIFORNIA

# COMMISSION ON JUDICIAL PERFORMANCE



## 1986 ANNUAL REPORT

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# **COMMISSION ON JUDICIAL PERFORMANCE**

## **1986 ANNUAL REPORT**

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# **TWENTY-SIXTH ANNUAL REPORT**

## **In Recognition of**

### **FORMER CHAIRPERSONS**

#### **Commission on Judicial Performance**



**HONORABLE A. F. BRAY**  
Presiding Justice, Court of Appeal  
San Francisco  
March 1961 - September 1964



**HONORABLE LLOYD E. GRIFFIN**  
Presiding Justice, Court of Appeal  
San Diego  
October 1964 - February 1965



**HONORABLE WILLIAM B. NEELEY**  
Judge of the Superior Court  
Los Angeles  
February 1965 - February 1967



**HONORABLE MURRAY DRAPER**  
Presiding Justice, Court of Appeal  
San Francisco  
February 1967 - December 1973



**HONORABLE BERTRAM D. JANES**  
Associate Justice, Court of Appeal  
Sacramento  
December 1973 - November 1979



**HONORABLE THOMAS KONGSGAARD**  
Judge of the Superior Court  
Napa  
December 1979 - November 1980



**HONORABLE HOWARD L. SCHWARTZ**  
Judge of the Municipal Court  
Oakland  
November 1980 - January 1981  
(currently Judge of the Superior Court)

## COMMISSION MEMBERS



**HONORABLE JOHN T. RACANELLI,**  
Chairperson  
Presiding Justice, Court of Appeal  
First Appellate District, Division One  
San Francisco  
Appointed June 1977  
Present term expires November 1988



**HONORABLE RICHARD A. BANCROFT**  
Vice Chairperson  
Judge of the Superior Court  
Oakland  
Appointed August 1981  
Present term expires November 1988



**JOSEPH W. COTCHETT**  
Attorney Member  
San Mateo  
Appointed January 1985  
Present term expires December 1988



**HONORABLE CHARLES E. GOFF**  
Judge of the Municipal Court  
San Francisco  
Appointed February 1981  
Present term expires January 1988



**ANDY GUY**  
Public Member  
Lodi  
Appointed November 1985  
Present term expires October 1989



**DALE E. HANST**  
 Attorney Member  
 Santa Barbara  
 Appointed January 1985  
 Present term expires December 1988



**BEN NOBLE**  
 Public Member  
 La Canada Flintridge  
 Appointed March 1984  
 Present term expires May 1987



**HONORABLE SARA K. RADIN**  
 Judge of the Superior Court  
 Los Angeles  
 Appointed September 1985  
 Present term expires February 1987



**HONORABLE ARLEIGH WOODS**  
 Presiding Justice, Court of Appeal  
 Second Appellate District, Division Four  
 Los Angeles  
 Appointed May 1986  
 Present term expires March 1989

**JACK E. FRANKEL**  
 Director-Chief Counsel

**PETER GUBBINS**  
 Investigating Attorney

**CYNTHIA DORFMAN**  
 Investigating Attorney

# I

## SUMMARY OF COMMISSION DISCIPLINARY ACTIVITY IN 1986

At the close of 1986, there were 1429 judicial positions within the jurisdiction of the Commission:

Justices of the Supreme Court	7
Justices of Courts of Appeal	77
Judges of Superior Courts	715
Judges of Municipal Courts	548
Judges of Justice Courts	82

Four hundred and seventy-six complaints were filed with the Commission in 1986. Several named more than one judge. Three hundred sixty-three complaints or seventy-six percent were closed following review and consideration by the staff and the Commission because no actionable allegations were presented. Most of these came from individuals dissatisfied with a judge's rulings on the merits of a particular case, frequently a small claims or domestic relations case involving the complainant. Although these complaints do not warrant investigation beyond review of the complaint, they nevertheless occupy large amounts of staff time spent writing and talking to the complainants about their difficulties and the reasons those problems are not grounds for Commission proceedings. While this process often does settle an issue for the complainant, many other times a troubled or frustrated or disgruntled person is as unhappy as ever, and repeated calls and letters are not infrequent.

This facet of the Commission's work does provide complainants a forum for their dissatisfactions and an opportunity to become informed about the role of the judiciary. Such problems are not limited to the average citizen. Government officials, practicing lawyers and judges sometimes make inquiries of the Commission when they are troubled with questions of judicial conduct or performance. Through these contacts, the Commission reviews, sifts, and often resolves a wide range of claims involving judges.

There was some investigation in one hundred and thirteen matters. Seventy-eight of these investigations included writing to the judge for comment and explanation. Twenty-two of these seventy-eight cases went to the stage of an official preliminary investigation under Rule 904 of the California Rules of Court. Twenty-six of the one hundred and thirteen complaints investigated resulted in private disciplinary action. Formal proceedings were ordered in four cases. In five cases, all of which had been initiated in 1985, formal hearings were concluded. In four cases, recommendations for public discipline were made to the Supreme Court (*In re Creede* 42 Cal.3d 1098 [censure]; *Furey v. CJP*, LA #32200 [removal]; *McCullough v. CJP*, SF #25030 [censure]; *Ryan v. CJP*, SF #25086 [removal].) There are presently five additional cases at the formal proceeding stage.

The numbers of complaints, investigations, formal proceedings and recommendations pending before the Supreme Court are at record levels. The best single

explanation for this is that the word has spread that the Commission on Judicial Performance has the authority and the will to do something about problems of judicial conduct. The Commission held eight two-day meetings in 1986, also a record number.

On numerous occasions during the year the Commission has communicated with bar associations and groups of judges about the work of the Commission. Practicing lawyers are traditionally reluctant to report judicial conduct problems. Occasionally, local bar associations have done so. If local bar groups know about the availability of the Commission, increased cooperation can be anticipated from this source. Also, for the first time ever a panel of Commission members and staff presented at the State Bar's annual meeting a program called "How and Why you should Utilize the Commission on Judicial Performance," moderated by a member of the Board of Governors. This educational activity has clearly resulted in increased business for the Commission.

The rapid growth of the Commission's workload is expected to continue. As the public, the bench and the bar become increasingly aware of what the Commission can and will do, the numbers of complaints and resulting investigations will rise even higher. Moreover, the Commission has taken on greater responsibility in conducting advanced investigations through its staff. Formerly, its own resources were too limited to do the kind of investigation that the Commission has decided is needed. During 1986 there were more advanced staff investigations than ever before, and this trend is likely to continue. In addition, proposals now being considered by the Commission for submission to the legislature could broaden the scope of the Commission's work by providing for constructive involvement in a range of judicial conduct problems not deserving of public censure which now receive inadequate attention.

## II

### PUBLIC DISCIPLINE

The Commission filed four recommendations in the Supreme Court. Two of the recommendations were for removal from office; these are pending. One recommendation for public censure is pending. In the fourth case, *In re Creede* 42 Cal.3d 1098, the Court has imposed the sanction of public censure recommended by the Commission.

The *Creede* case was referred to the Commission by the Commission on Judicial Appointments. Fresno Superior Court Judge Frank Creede, Jr., had appeared before that body in hearings on confirmation of his appointment by the Governor to the Court of Appeal for the Fifth District. When the Appointments Commission was provided with information indicating that Judge Creede had not decided a number of cases within ninety days of their submission but had continued to present affidavits to the contrary and to receive his salary while the cases remained undecided, the matter was referred to this Commission for "determination."

Article VI, section 19 of the California Constitution provides, "...A Judge of a court of record may not receive the salary for the judicial office held by the judge while any cause before the judge remains pending and undetermined for 90 days after it has been submitted for decision." Government Code section 68210 requires a judge of a court of record to state monthly by affidavit that no case is pending and undeter-



mined for 90 days after submission in order to receive his or her salary. In *Mardikian v. Commission on Judicial Performance* (1985) 40 Cal.3d 473, 220 Cal.Rptr. 883, 709 P.2d 852, the Court pointed out that neither this constitutional provision nor Government Code section 68210 mandates that judges decide cases within 90 days of their submission. "Nonetheless," the Court stated, "the 90-day provision which has been a part of the Constitution since its adoption in 1879, and section 68210 (which in 1966 replaced the affidavit requirement formerly in the Constitution) reflect the judgment of the Legislature and the electorate that this period affords a reasonable time within which to expect a trial judge to carry out the basic responsibility of a judge to decide cases under Code of Civil Procedure, section 170." (*Id.*, at p. 447, fn. 4.)

Following investigation and nine days of evidentiary hearings, the three judges appointed as Special Masters to hear the case determined that Judge Creede had submitted salary affidavits and received his salary while fifty-one cases were submitted and pending for over ninety days, but that when he executed the salary affidavits he was unaware that any submitted cases remained or would remain undecided in excess of ninety days, and that he did not execute any affidavits knowing them to be false. The Masters concluded, "The totality of the circumstances of failing timely to decide fifty-one cases coupled with the execution of erroneous salary affidavits and receipt of judicial salary brings the judicial office into disrepute." Following argument before the Commission by the judge and his counsel and the examiners appointed to present the case, the Commission adopted the Special Masters' Findings of Fact and Conclusions of Law and filed with the court a recommendation for public censure. Judge Creede did not oppose the censure recommendation, and on October 3, 1986, the Court adopted the Commission's recommendation. The Court said:

The record reveals that Judge Creede is a diligent, hardworking and highly respected judge. Nonetheless, clear and convincing evidence supports the conclusion that he violated Canon 3 A (5) of the California Code of Judicial Conduct, which states that "A judge should dispose promptly of the business of the court." During a five-year period, between March 1979 and April 1985, Judge Creede repeatedly and unjustifiably delayed filing decisions in cases submitted to his court. During this time, he continued to execute erroneous salary affidavits and to collect his salary even though submitted cases remained pending and undecided in his court for periods in excess of 90 days. [Citations omitted.] He did not, however, knowingly falsify the salary affidavits, and did not intentionally or maliciously disregard his adjudicative responsibilities. There was no credible evidence of actual prejudice from the delays, which were partially attributable to an excessive workload and inadequate support staff. Yet he could have taken steps to monitor his cases and to dispose more promptly of submitted matters. Since the protracted delays served to damage the esteem of the public for the judiciary, his conduct was "...prejudicial to the administration of justice..."

### III

#### PRIVATE DISCIPLINE AND DISPOSITIONS

Twenty-six complaints resulted in disciplinary action or disposition that did not become public. These cases accounted for about twenty-five percent of the complaints that warranted investigation, or five percent of the total complaints received.

The Commission imposed three private admonishments pursuant to Court Rule 904(d). One of these followed a hearing. Here are descriptions of the conduct which resulted in the admonishments:

A judge failed to decide several cases within 90 days of their submission and over an eight-month period filed salary affidavits incorrectly stating that no such submitted cases remained pending and undecided, and received salary. The Commission found substantial mitigation in the fact that the delays were mostly attributable to specific events over which the judge had no control.

A judge failed to decide three cases, one of which remained submitted and undecided for four years, for no apparent reason in spite of notice of the pendency of the cases. After a hearing the Commission concluded that these failures, coupled with the judge's acceptance of his salary and submission of false salary affidavits, were derelictions of duty. The Commission adopted the Masters' finding that there were significant factors in mitigation, including an undertaking to devise and implement a system for tracking submitted cases.

A judge abused the power of contempt on two occasions. In addition, on several occasions the judge displayed discourtesy and intemperance toward witnesses, litigants and attorneys which lent an appearance of prejudgment to his rulings.

The balance of actionable complaints which did not warrant public discipline were disposed of informally by letters advising caution or expressing disapproval of performance which the Commission viewed as either minor transgression or in apparent disregard of ethical precepts. Here are summaries of these cases:

A judge created a perception of unfairness by ordering a new trial in a small claims case after receiving a letter from the losing party.

A judge offered negative opinions of a party and the party's counsel in an ex parte conversation with an individual he was appointing as an expert witness; the witness' subsequent testimony was stricken by another judge on the basis of a "rather strong appearance of impropriety."

A judge's name appeared as a "sponsor" on a political mailing for a candidate for non-judicial office.

A judge used official judicial stationery in correspondence with the opposing party in personal litigation.

A judge accepted pleas from uncharged defendants who had appeared for arraignment as their bail slips had directed but before the district attorney had filed a complaint charging an offense.

A judge appeared to treat the parties to an action unevenly by excusing an instance of tardiness by defense counsel while sanctioning the in pro per plaintiff for the same act.

After a jury returned a verdict, a judge commented to the jury about the defendant's prior violations, which had not been received in evidence.

A judge altered court records to resolve an apparent inconsistency in the record, with results adverse to a pro per litigant.

A judge displayed anger and hostility toward a person attending a judicial proceeding.

Commission inquiry into a judge's public "feud" with another judge was terminated upon the assurance that there would not be any repetition.

A judge arranged for a political mailer which appeared to pair the judge with, and to constitute an endorsement of, a candidate for non-judicial office.

A judge authorized the written use of the judge's name as an endorsement of a candidate for non-judicial office.

A justice court judge who was permitted to practice law called attention to his judicial position while appearing as an attorney in another court.

A judge's inadvertence caused an eighteen-month delay between submission and decision of a single case.

A judge's statements that an indicated sentence based on a plea might be increased should defendant go to trial appeared to be, and were understood as, an effort to discourage a defendant's exercise of his right to trial.

A judge was reminded to keep in mind the requirement of courtesy expressed in Canon 3 after the litigants perceived the judge's remarks as insulting.

A judge made political contributions inconsistent with Canon 7.

A judge made public comments about a case pending in another judge's court.

After the jury in a criminal case announced that it was unable to reach a verdict, a judge directed the prosecutor to retry the case and referred to the defendant's prior convictions, previously unknown to the jury.

There was a five-month delay between submission and decision of a case.

A juvenile court judge was advised that parents of juvenile witnesses in a case perceived some of the judge's remarks as demonstrating impatience.

A judge failed to decide three submitted cases within ninety days and did not complete them until notified by an attorney or party.

The purpose of private discipline and disposition is educational and corrective. While these cases are not public, summaries are provided here for the information and benefit of the bench, bar, and public.

## **APPENDICES**

## COMMISSION CASES TO THE SUPREME COURT

**Stevens v. Commission on  
Judicial Qualifications**

61 Cal.2d 886 (1964)  
39 Cal.Rptr. 397  
393 P.2d 709

**In re Gerald S. Chargin**

2 Cal.3d 617 (1970)  
87 Cal.Rptr. 709  
471 P.2d 29

**In re Bernard B. Glickfeld**

3 Cal.3d 891 (1971)  
92 Cal.Rptr. 278  
479 P.2d 638

**In re Leopoldo Sanchez**

9 Cal.3d 844 (1973)  
109 Cal.Rptr. 78  
512 P.2d 302

**In re Antonio E. Chavez**

9 Cal.3d 846 (1973)  
109 Cal.Rptr. 79  
512 P.2d 303

**Geiler v. Commission on  
Judicial Qualifications**

10 Cal.3d 270 (1973)  
110 Cal.Rptr. 201  
515 P.2d 1  
cert.den. (1974) 417 U.S. 932  
41 L.Ed.2d 235, 94 S.Ct. 2643

**McCartney v. Commissions on  
Judicial Qualifications**

12 Cal.3d 512 (1974)  
116 Cal.Rptr. 260  
526 P.2d 268

**Spruance v. Commission on  
Judicial Qualifications**

13 Cal.3d 778 (1975)  
119 Cal.Rptr. 841  
532 P.2d 1209

**Cannon v. Commission on  
Judicial Qualifications**

14 Cal.3d 678 (1975)  
122 Cal.Rptr. 778  
537 P.2d 898

**McComb v. Commission on  
Judicial Performance**

19 Cal.3d Spec.Trib.Supp. 1 (1977)  
138 Cal.Rptr. 459  
564 P.2d 1

**McComb v. Superior Court of  
San Francisco, et al.**

68 Cal.App.3d 89 (1977)  
137 Cal.Rptr. 233

**In re Arden T. Jensen**

24 Cal.3d 72 (1978)  
154 Cal.Rptr. 503  
593 P.2d 200

**In re Charles Robert Roick**

24 Cal.3d 74 (1978)  
154 Cal.Rptr. 413  
592 P.2d 1165

**In re Robert S. Stevens**

28 Cal.3d 873 (1981)  
172 Cal.Rptr. 676  
625 P.2d 219

**Wenger v. Commission on  
Judicial Performance**

29 Cal.3d 615 (1981)  
175 Cal.Rptr. 420  
630 P.2d 954

**In re Hugo M. Fisher**

31 Cal.3d 919 (1982)  
184 Cal.Rptr. 296  
647 P.2d 1075

**In re Charles S. Stevens**

31 Cal.3d 403 (1982)  
183 Cal.Rptr. 48  
645 P.2d 99

**Gonzalez v. Commission on  
Judicial Performance**

33 Cal.3d 359 (1983)  
188 Cal.Rptr. 880  
657 P.2d 372  
appeal dismissed, 104 S.Ct. 690 (1984)

**Roberts v. Commission on  
Judicial Performance**

33 Cal.3d 739 (1983)  
190 Cal.Rptr. 910  
661 P.2d 1064

**In re Bobby D. Youngblood**

33 Cal.3d 788 (1983)  
191 Cal.Rptr. 171  
662 P.2d 108

**Gubler v. Commission on  
Judicial Performance**

37 Cal.3d 27 (1984)  
207 Cal.Rptr. 171  
688 P.2d 551

**Mardikian v. Commission on  
Judicial Performance**

40 Cal.3d 473 (1985)  
220 Cal.Rptr. 833  
709 P.2d 852

**In re Frank J. Creede**

42 Cal.3d 1098 (1986)

## **CASES COMING BEFORE THE COMMISSION OF JUDICIAL PERFORMANCE**

### **Five-Year Summer - 1982-1986**

Year	Complaints Filed	Inquiries* (Some kind of Investigation)	Judges* Contacted	Preliminary Investigations	Admonishments	Resignations or Retirements While Under Investigation	Public Discipline
1982	360	68	61	14	5	1	2 censures
1983	351	63	56	21	6	3	2 censures 1 removal
1984	388	62	64	17	3	1	1 censure
1985	317	54	47	11	6	2	1 censure
1986	476	113	78	22	3	1	1 censure

\* Some Inquiries can involve more than one Judge; more than one Judge may be contacted in a single Inquiry.

January 1987